IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.4029 OF 1990

1. Poona Dio'cessan Corporation Pvt. Ltd., a Company incorporated for charitable objects having its registered office at Bishop's House 1-B, Prince of Wales Drive, Pune-1.

2. Alloysius Lowrence Fonseca, age 41, Catholic Ashram, Trimbak Naka, Nasik, holding General Power of Attorney for the Corporation.

3. Shailchandra, Age 52, Catholic Ashram, Nasik. .... Petitioners

- Versus -

1. Hindustan Petroleum Corporation Ltd., regd. company having registered office at 17, Jamshedji Tata Road, Bombay-400 020.

2. M/s. J.R. Mehta and Sons, Petrol Pump, dealer, Old Agra Road, Trimbak Naka, Nasik. .... Respondents

Shri P.A. Jani i/b M/s. Gagrat & Co. for the Petitioner Nos.1 and 2.

Shri A.K. Abhyankar for the Respondents.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: NOVEMBER 25, 2004

ORAL JUDGMENT:

1. Heard the learned Advocates for the parties.

Perused the records.

2. The petitioners challenge the order passed by the lower Appellate Court on 19-7-1989 to the extent it dismisses the appeal against the order of dismissal of the suit by the trial Court on the ground of failure on the part of the petitioners to establish the allegation against the respondents regarding the breach of the agreement of lease in as much as that the respondents had carried out permanent construction in the suit premises without the permission of the petitioners and secondly in relation to the rejection of the claim by the petitioners about the bona fide and reasonable need of the suit premises for personal use and occupation.

3. Both the Courts below have arrived at the concurrent findings on the point of failure on the part of the petitioners either to establish the breach of the agreement in relation to the alleged permanent construction as well as failure on the part of the petitioners to establish the bona fide and reasonable need of the suit premises for personal use and occupation. The findings have been arrived at on detail analysis of the evidence on record and in the absence of the same being shown either as perverse or not borne out from the records, do not warrant interference in writ jurisdiction in exercise of power under Article 227 of

the Constitution. Inspite of strenuous efforts on the part of the learned Advocate for the petitioners to convince the Court about the perversity in the said findings, I do not find any of the findings to be perverse as the assessment of the evidence done by the Courts below apparently discloses that the said findings are clearly borne out from the records and there is total failure on the part of the respondents to establish either of the grounds on which the eviction of the respondent was sought for.

4. As regards the claim for bona fide need of the premises, the analysis of the evidence on record by both the Courts below discloses that the petitioners had failed to produce any evidence in that regard and therefore there is absolutely no case for interference in rejection of the said claim by the petitioners on the ground of bona fide need of the premises for self-occupation thereof.

5. As regards the contention about a permanent construction, attention was sought to be drawn to the agreement between the parties which prohibited such construction without the consent of the landlord and it was further submitted that both the Courts below failed to take note of the fact that the respondents had installed a service centre in the area where the

construction of a permanent nature has been carried out. It was sought to be contended that the agreement which was essentially for the purpose of trade and commerce in relation to petrol, oil and petroleum products, does not permit any business in the nature of a service centre which is totally unconnected with the trade in petrol or oil or petroleum products.

6. As regards the finding by the Courts below that the petitioners have failed to establish the absence of consent for carrying out the construction of a permanent nature, is a finding of fact and does not warrant any interference in writ jurisdiction nor it calls for reassessment of the evidence in that regard.

7. As regards the contention about the commencement of the service centre, plain reading of the agreement between the parties discloses that there is no bar for carrying out such business in the leased premises. The relevant portion of the agreement provides that the lessee is permitted

> "to instal, erect and maintain in and upon the said piece of land, roadways and pathways and underground tank(s) and delivery pump(s) connected with the said tank(s) and shelter for an attendant and

> any other building, erection or equipment whether of a permanent or temporary nature for the purpose of storing, selling or otherwise carrying on trade in petrol, petroleum products, oil and .....(sic) motor accessories and any other trade or business that can conveniently be carried on there ....."

Obviously the agreement clearly permits the lessee to carry out any trade or business that can conveniently be carried with the trade in petrol, oil and petroleum products. Certainly the service centre can be one of such trade which can conveniently be carried on with the trade of petroleum and oil. In fact the petitioners have not produced any evidence on record nor it has been the specific case pleaded by the petitioners to the effect that such a business would not be one which can conveniently be carried on along with the trade in petrol, oil or petroleum products. Being so, the contentions sought to be raised in that regard are also devoid of substance.

8. In the result, therefore, there is no case made out for interference in the impugned judgment. The petition fails and is hereby dismissed. The rule is discharged with no order as to costs.